

PUBLIC COMMENTS ON DRAFT SUPPLEMENT STANDARD REVIEW PLAN

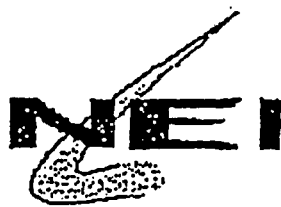
Attachment 3

46042860478

Rec'd RDB/DAS/ADM
8/18/04; 3:10pm

11/19/04
69 FR 43277

(3)



NUCLEAR ENERGY INSTITUTE

FAX Cover Sheet

To: CHIEF, RDB
Company: NUCLEAR REGULATORY COMMISSION
Phone: 301-415-5144
Fax:

From: RICHARD MYERS
Company: Nuclear Energy Institute
Phone:
Fax: 202.293.3056

Date & Time: 18 AUGUST 2004
Pages including
cover sheet: 14

Comments:

NEI COMMENTS ON NUREG-1577, Rev. 1,
69 FED. REG. 43,278 (July 19, 2004)

F-RDS=ADM-03

CC = M-DUS971115KXJ
(MAD1)

Template = ADM-013



NUCLEAR ENERGY INSTITUTE

Richard J. Myers
SENIOR DIRECTOR, BUSINESS
& ENVIRONMENTAL POLICY

August 18, 2004

Chief, Rules and Directives Branch
Mail Stop TQ-D59
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Comments on NUREG-1577, Rev. 1, Draft Supplement to Standard Review
Plan Decommissioning Funding Insurance for Power Reactors
69 Fed. Reg. 43,278 (July 19, 2004)

Dear Sir:

The Nuclear Energy Institute ("NEI"), on behalf of the nuclear industry,¹ is pleased to comment on the draft Supplement to Standard Review Plan ("SRP") on Decommissioning Funding Insurance for Power Reactors (69 Fed. Reg. 43,278 (July 19, 2004)).

NEI supports the NRC's development of this guidance for the use of insurance as a mechanism for providing reasonable assurance that decommissioning funds will be available when required. Insurance is a method of decommissioning funding permitted by the NRC regulations, but has not yet been developed as a product offered by any insurers (except for coverage involving an accident). The SRP will help prospective insurers understand NRC's requirements and provide this coverage. In addition, the various methods of decommissioning funding allowed by the NRC rules are intended to provide flexibility to licensees on how they provide financial assurance, and facilitating the development of viable decommissioning insurance policies will promote that important goal. Finally, the existence of viable decommissioning insurance may be very important to the next generation of nuclear plants, likely to be developed by merchant generators. For all these reasons, NEI strongly encourages the NRC to issue the guidance.

NEI does have a number of concerns about the draft Supplement to the Standard Review Plan, however. These are discussed in detail in the Enclosure to this letter.

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, nuclear insurers, and other organizations and individuals in the nuclear energy industry.

Comments on NUREG-1577, Rev. 1, Draft Supplement to Standard Review Plan
Decommissioning Funding Insurance for Power Reactors

August 18, 2004

Page 2

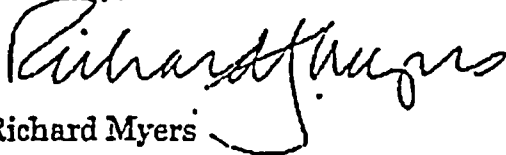
NEI strongly urges the NRC to amend the draft Supplement to address these concerns before issuing it in final form.

NEI is aware of two proposals for decommissioning insurance that have been submitted to the NRC. The NRC should endeavor to make the draft SRP as consistent with those proposals as the NRC's regulatory objectives allow, because the two pending proposals represent products that have been structured with considerable effort to balance NRC, tax, insurance and commercial needs. For example, under the Internal Revenue Service's regulations, an insurer must demonstrate that its coverage involves a sufficient transfer of risk in order to be allowed to establish loss reserves offsetting the income that would otherwise be taxable when premiums are received. Thus, a product that proposes simply to return invested premiums and earnings to an insured licensee at the time of decommissioning would not qualify as insurance. An insurer must also structure its coverage and reserves to meet the requirements of the insurance commissioner for the state in which it is licensed. At the same time, an insurer must establish customary and reasonable commercial terms to protect its business interests, including reasonable exclusions and claims management provisions. NEI urges the NRC to recognize that a viable decommissioning insurance product can only be offered if all of these needs are balanced.

More detailed comments are provided in the enclosure to this letter. These comments have been developed in consultation with the sponsors of both decommissioning insurance proposals pending before the NRC. These comments therefore seek to balance the NRC's regulatory objectives with other applicable legal requirements and with commercial needs. If you have any questions on these comments, please contact me at (202) 789-8021.

Once again, we appreciate the opportunity to provide these comments and urge the Commission to adopt criteria that will allow insurance to become a viable decommissioning funding mechanism in the United States.

Sincerely,



Richard Myers

Enclosure

Enclosure

NEI Comments on Draft Supplement to Standard Review Plan
Decommissioning Funding Assurance for Power Reactors (69 Fed. Reg. 49,278)

The comments below relate to the acceptance criteria in section II of the draft Standard Review Plan ("SRP") and are presented in the order raised by the SRP. The numbers and headings below correspond to those used in the SRP.

II. Acceptance Criteria

The draft SRP states that the name of the policy is much less important than "the certainty of availability of funds." It would be more appropriate to refer to the "degree of certainty" or "reasonable assurance" of the availability of the funds, to avoid any unreasonable suggestion that absolute certainty is required. Absolute certainty cannot be provided for any product qualifying as true insurance and, in fact, is not provided by any other decommissioning funding mechanism. NRC rules themselves require "reasonable assurance that funds will be available for the decommissioning process." 10 C.F.R. § 50.75(a).

1. Amount of Coverage As Related to 10 CFR 50.75(b)(1)

The SRP should recognize and indicate explicitly the acceptability to NRC of insurance offered in combination with other decommissioning funding methods. A combination of funding methods is permissible under the existing NRC regulations. See 10 C.F.R. § 50.75(e)(1)(iv). The draft SRP, for example, calls for the policy coverage to provide an amount of coverage not less than the table of minimum amounts in 10 C.F.R. § 50.75(b)(1). 69 Fed. Reg. at 49,278. Clearly, a combination of methods can be used to meet NRC's minimum funding assurance requirements, such as the combination of insurance coupled with the prepayment method, e.g., funds accumulated in the nuclear decommissioning trust funds (NDTs) as proposed by Nuclear Electric Insurance Ltd. (NEIL). Insurance could also be used in combination with the external sinking fund method accumulating additional funds over time (for licensees that qualify to use this method) or along with a parent company guarantee to make up any shortfall in the insurance. When a combination of methods is used, it is the total assurance provided by the combination of methods that must satisfy NRC's minimum funding assurance requirements and not the insurance (or any other single method) in isolation.

The SRP should also recognize that a licensee's decommissioning funding obligation could be based on a site-specific decommissioning cost estimate that is less than the minimum formula amount, if the NRC has approved that lower funding level either through an exemption or, if at the end of the plant life, through acceptance of a site-specific cost estimate in a Post-Shutdown Decommissioning Activities Report

(PSDAR), License Termination Plan (LTP), or Decommissioning Plan (DP). The SRP should recognize these possibilities.

The statement in the draft SRP that "[t]he insurance policy should guarantee the total amount of currently estimated decommissioning costs" (69 Fed. Reg. at 43,278-79) should recognize that a combination of methods may be used. Moreover, this statement goes beyond the NRC regulations, which require only that the funding assurance exceed the formula amounts. While a proposed policy may choose to provide coverage (either alone or in combination with another method) exceeding a current, site-specific estimate, the NRC should recognize that such coverage is not required by the NRC's rules. In addition, the word "guarantee" should be avoided, because it suggests an absolute level of assurance that is inconsistent with the concept of insurance. Providing "reasonable assurance" of a level of funding is the appropriate standard.

The draft SRP states that the "amount of coverage should be a specific dollar number and not be a schedule or formula contingent on projected earnings under the policy." *Id.* at 43,278. This sentence should state that "the minimum amount of coverage should be a specific dollar amount." There could be situations where a policy a certain amount meeting NRC requirements, but offers additional coverage in certain circumstances. For example, NEIL's proposed policy increases the policy limit if a covered unit renews its operating license and operates beyond the original license expiration date. Alternatively, a policy may provide for reductions in the policy limits under certain circumstances pursuant to a pre-determined methodology. As long as the base coverage or minimum amount of coverage (and any other funding mechanisms provided by the licensee) meet the NRC minimum requirements, the NRC should not impose any constraints on provisions that allow increases in coverage.

The draft SRP states that if a policy covers both NRC and non-NRC costs (e.g., site restoration costs and spent fuel management costs), they should be separately identified. 69 Fed. Reg. at 43,279. This proposed position is problematic for a number of reasons. First, creating sub-limits for separate categories of costs would adversely affect risk transfer allocations required to demonstrate that the coverage constitutes insurance for tax purposes. Second, providing separate limits would be administratively burdensome and disadvantageous. Because site-specific decommissioning cost estimates are not exact, establishing sub-limits based on estimates for each of these categories of costs may prevent an insured licensee from obtaining the maximum value of the insurance if the actual cost allocation later differs from allocations predicted in the prior estimates. For example, for a policy that otherwise had an overall limit of 100, the creation of sub-limits might result in 80 for NRC costs and 20 for non-NRC costs. If actual costs were 85 and 10, the creation of sub-limits would result in insurance coverage of just 90 and a shortfall of 5, whereas without sub-limits the insurance would pay all 95 in costs.

In addition, licensees would be required to implement a system of classifying and allocating costs, which would increase the administrative expense. Such accounting is not required for the licensees currently using trusts to pay for ongoing decommissioning, so it is unclear why such limitations should be imposed if decommissioning is paid through insurance. Further, establishing a separate coverage for non-radiological decommissioning costs (site restoration costs) is unnecessary. These costs are relatively small compared to the radiological decommissioning costs. With the exception of costs to conduct initial non-radiological site surveys or other site characterization, such costs are generally incurred after completion of radiological decommissioning (i.e., buildings are decontaminated to NRC release limits before they are demolished, and grading and re-vegetation of the site occurs after structures are demolished).

As an alternative to creating sub-limits, NRC could require simply that insurance provide a priority for NRC's basic radiological costs as defined in 10 C.F.R. § 50.75. For example, a policy should be acceptable if it provides that these NRC costs have priority and that payment of claims for other costs would only be made if such categories of costs are specified in a PSDAR, LTP, DP or other similar submittal that has been subject to NRC review.

The draft SRP states that the amount of coverage should be capable of being adjusted. Id. While a licensee is responsible for periodically adjusting its funding assurance to maintain compliance with NRC requirements, the need for the licensee to adjust its level of funding assurance when necessary should not be translated into a requirement for an automatic adjustment to the insurance policy limit. For example, in the case of NEIL's proposed insurance, compliance with NRC's funding requirements would be provided by the combination of insurance and the qualified trust funds, and any periodic adjustment to meet NRC requirements after purchase of the insurance would be accomplished by the licensee by additional contributions to the trust funds (or by any other method permitted by NRC's regulations). Even where insurance is offered as the sole funding mechanism, any necessary adjustment could be provided by the licensee by purchasing additional insurance, rather than by some automatic increase by the insurer in the policy limit. Moreover, automatic adjustment of the policy limits would likely present tax problems. For example, an automatic escalation of the policy limit based on the earnings on the invested premiums likely would not provide sufficient risk transfer for the coverage to qualify as insurance for tax purposes.

The draft SRP states that deductibles may be called a retention, a self-insured retention, self insurance, "or other euphemism." 69 Fed. Reg. at 43,279. Euphemism means the substitution of an inoffensive term for one that is considered explicitly offensive. Since there is nothing offensive or wrong about deductibles, this choice of words is inappropriate.

3. Scope of Coverage

The draft SRP states that the NRC should "[v]erify the scope of coverage, which should be for NRC (§ 50.2) defined decommissioning costs." 69 Fed. Reg. at 48,279. The draft SRP should call for verification that the scope of coverage "includes" NRC defined decommissioning costs, but should not preclude coverage for additional costs incurred after a plant permanently ceases operation.

With respect to the scope of coverage, the draft SRP calls for review of any policy limit that defines covered decommissioning costs only as those incurred by reason of work performed because "such a limit is inconsistent with the payment of funds into the standby trust prior to decommissioning costs being incurred." *Id.* This guidance is fundamentally inconsistent with the concept that insurance is an indemnity to pay for losses that have been incurred. Moreover, this could present a significant impediment to obtaining state insurance commissioner approval or the necessary determination from the IRS that arrangements constitute insurance for tax purposes.

The guidance appears to contemplate that the insurance policy would pay a fixed amount into a standby trust upon commencement of decommissioning. Such a fixed payment obligation would likely not result in a sufficient risk transfer to qualify the product as insurance for tax purposes.¹ Moreover, it is commercially unreasonable to expect any insurer to pay claims without regard to whether the costs have been incurred and are covered by the Policy. Consequently, in order to make insurance the viable method intended by NRC's regulations, the SRP must recognize and allow a claims payment process where an insurer promptly reimburses the licensee for insured costs actually incurred and as they are incurred.

Consistent with the proposed Acceptance Criterion 21, NRC's guidance should focus on the need to assure that the mechanisms in place for payment of claims will provide sufficient and timely payments to the trust (or directly to vendors as directed by the Trustee) so that bills are paid in a timely manner when they become due. Modern technology such as email communications, electronic signatures, and electronic transfers of funds, make it relatively easy to arrange for the instantaneous, timely remittance of funds. Notably, an insurer will have every incentive to assure that vendors' bills are paid on a timely basis, because failure to do so will increase vendors' charges and therefore the cost of decommissioning, all to the disadvantage of the insurer.

Also with respect to the scope of coverage, the draft SRP states that legal fees related to decommissioning must be covered by decommissioning insurance if

¹ The transfer of investment risk is not sufficient to qualify the product as insurance.

incurred. This guidance is too broad and does not appear to be necessary to meet the NRC's regulations and objectives. For example, having the insurance pay for the legal fees associated with commercial litigation between the licensee and a decommissioning contractor may not serve to complete actual radiological decommissioning work, but rather may only reduce the funds available to perform actual work. Depending upon the circumstances, insuring legal fees could foster protracted litigation and could subject an insurer to a significant liability that cannot be priced when the policy is issued. Thus, mandating that insurance pay legal fees would be counter-productive, because it could make fewer insurance proceeds available for decommissioning, rather than more. In contrast, the insurer will be economically motivated to reduce the overall cost of decommissioning, and therefore, the insurer is in the best position to oversee the judgment as to whether investing funds in litigation with vendors is likely to reap sufficient returns to outweigh the costs. An acceptable policy should therefore provide that the insurer may authorize legal expenses for vendor litigation, but such expenses are not recoverable under the policy unless they are pre-approved by the insurer.

Licensees may recognize that certain legal costs associated with the administration of trust funds, the payment of claims, and obtaining required regulatory approvals (e.g., the costs of participating in an NRC adjudicatory hearing on approval of the LTP) are part of the decommissioning process. These types of costs may be included in an insured's site-specific cost estimates, and therefore, these costs could be within the scope of the insurance coverage, if they are identified and capable of being estimated as part of the underwriting process. At a minimum, the SRP should distinguish between legal fees associated with commercial litigation or tort claims and legal fees incurred to obtain NRC approvals of a license termination plan.

4. Issuer Qualifications

The draft SRP states that special terms and conditions are appropriate for insurers domiciled outside of the U.S. It is unclear whether "domicile" refers to where the insurer is incorporated or where it is licensed and has its principal place of business. If the insurer is licensed and has its principal place of business in the United States, there should be no need for any special terms or conditions, even if the insurer is incorporated overseas (for example, in Bermuda, as is common). If the insurer is licensed by a State, it will be subject to regulation by that State's insurance commissioner and will be subject to the jurisdiction of U.S. courts. NEIL, for example, is incorporated in Bermuda but licensed by and has its principal place of business in Delaware, and it is currently relied on to provide the property insurance required under 10 C.F.R. § 50.54(w). In fact, the NRC preempted conflicting state laws so that Texas municipalities could purchase insurance from NEIL. 52 Fed. Reg. 28,963 (Aug. 5, 1987).

The draft SRP also states that authorities of the State where the nuclear plant is located must license the insurer. This position is also unnecessary and inconsistent with insurance regulation. For example, insurance may be issued by a risk retention group (RRG) that is organized and chartered in one state in compliance with the Federal Liability Risk Retention Act of 1986. 15 U.S.C. § 3901 *et seq.* Such an RRG does not become licensed in other states, but rather is required to meet certain reporting requirements. 15 U.S.C. § 3902(d). Requiring licensing in each state is inconsistent with the federal statutory scheme for RRGs. Yet, NRC's guidance itself acknowledges that an RRG may be an acceptable issuer of decommissioning funding insurance.

In addition, many States exempt insurance companies from licensing requirements if the insurance is issued to an "industrial insured" or if an insured procures insurance independently outside of the jurisdiction. Thus, for example, NEIL, which provides the property damage coverage for U.S. reactors, is licensed only in Delaware and Bermuda, and provides coverage in certain other jurisdictions pursuant to statutory exemptions. In the event such an exemption is not available, NEIL requires its insured to purchase and accept delivery of its policy in Delaware. If a licensee proposes to use decommissioning insurance, it is appropriate for the NRC to seek confirmation that the insurance is offered, issued, and delivered properly, but a requirement for licensing in every jurisdiction would simply subject the insurer to unnecessary and duplicative regulation in a multitude of jurisdictions.

The draft SRP states that a captive insurer that covers only a single owner's reactors will be problematic, because such coverage would be synonymous with self insurance, which the NRC regulations do not permit. 69 Fed. Reg. at 48,279.² The question of whether or not an insurer for a single owner's plants is acceptable should be decided based upon whether or not there is adequate risk diversification for the proposed insurance company. Such coverage would not be the same as an internal reserve, which the NRC regulations prohibit, because the coverage would be provided by a separate company, regulated by a State's insurance commissioner, and backed by invested assets meeting the State's solvency requirements. Moreover, the funds would be available to the insured licensee only when payable as a claim under the policy. Thus, unlike an internal reserve, the funds would not be commingled with the licensee's assets or controlled by the licensee. Because the funds would be maintained in a separate insurance company, they would be outside the reach of creditors in the event of the licensee's bankruptcy, and thus, the funds held in the single owner insurance company may well be better protected and preserved to provide assurance for decommissioning, than existing NDTs, which are only protected by the bankruptcy court's mandate to act in the public interest.

² This statement is not entirely correct in that the NRC regulations do allow for self-guarantees. See 10 C.F.R. § 50.75(c)(1)(iii)(C).

The draft SRP states that a mutual, captive or risk retention group (RRG) that can insure more than a single owner's reactors also may be problematic unless the insurer covers "a relatively large number of owners and reactors." This position should be clarified to address specifically the issue at hand, whether the insurer will have adequate financial resources. Whether an insurer is organized as a stock or mutual company is not related to its spread of risk or the adequacy of its financial resources. For example, FM Global and Liberty Mutual are two of the world's largest insurers, notwithstanding that they are organized as mutuals. Mutual insurers should be permitted if they demonstrate that risk is sufficiently pooled and diversified, or that they have adequate resources. Such a demonstration will depend on a number of factors and should be made on a case-by-case basis. NRC can properly rely upon actuarial analyses conducted to support a particular insurance program, as these same analyses will be reviewed and evaluated by at least one state insurance commissioner in approving the insurance program.³

The draft SRP states that a group captive, RRG or mutual insurer is acceptable if the IRS has issued a ruling finding that the premiums paid by the insurer will be considered deductible for tax purposes, and if the issuer has received certain investment ratings from rating agencies. These criteria are inappropriate.

A private letter ruling may be important to a new captive insurer to protect itself against unintended tax liability, but it is not required. NRC need only be concerned that there is a reasonable basis for the tax treatment that is assumed in the economic analyses supporting the proposed insurance company. Once again, NRC can rely on the fact that a state insurance commissioner will also review and evaluate those same assumptions. Moreover, a private letter ruling is not an indicator of the insurer's financial strength. To the contrary, the private letter ruling is primarily an indication that the insurer is assuming sufficient risk for its product to be considered insurance (i.e., the IRS is more likely to issue the requested ruling if the risk assumed by the insurer is high). Finally, deductibility of insurance premiums is not a requirement for insurance to be a viable method of providing financial assurance for decommissioning.

With respect to the proposed requirements regarding financial ratings, the NRC's criteria would likely effectively foreclose any newly formed insurance company from offering decommissioning insurance. Rating agencies do not routinely assign a rating to a newly formed entity. Rather, rating agencies typically require several years worth of earnings history before providing ratings. Moreover, it is not clear

³ The real issue relating to insurers organized as mutuals, captives and RRGs is the statutory requirement that they be owned by their insureds, which may be a problem for certain municipalities that may not own stock in a private corporation or become a member of a mutual.

why an A.M. Best rating should be required for a new decommissioning funding insurer. For example, NEIL has provided billions of dollars of insurance coverage in the nuclear industry in order to meet NRC requirements (e.g., 10 C.F.R. § 50.54(w)) throughout the 1980s and 1990s, but it did not receive an A.M. Best rating until 1998, 18 years after it began offering insurance. Accordingly, the NRC should delete both of these criteria, and should instead evaluate each new insurance proposal on a case-by-case basis, with considerable deference given to the solvency requirements of the insurance commissioner of the State in which the insurer is licensed.

5. Trustee Must be Acceptable to NRC
6. Covered Licensee(s)
7. Licensee's Regulatory Obligations are Reason for Policy
8. Policy Term
11. Beneficiary
12. Bankruptcy or Insolvency of the Insured
14. Changes
15. Designated Agent
17. Copies
20. Assignment

Several Acceptance Criteria are proposed under 5, 6, 7, 8, 11, 12, 14, 15, 17, 20, regarding various policy terms. These criteria appear to be appropriate.

9. Cancellation/Termination and Non-Renewal
10. Automatic Payment Prior to Cancellation/Termination/Non-Renewal

The draft SRP specifies certain notice and payment requirements for cancellation or termination. The draft SRP should clarify that these provisions are inapplicable to a policy that cannot be cancelled.

The draft SRP states that the policy must provide for payment of the "full face amount" in the event that a policy is canceled, terminated or not renewed and the licensee fails to provide an acceptable substitute. The SRP should recognize that an insurance policy may specify several face amounts that apply in different situations, including a face amount applicable if a policy is terminated because of non-payment of premiums, material breach, or fraud. The SRP should clarify that it is the applicable face amount that would be paid to a standby trust in the event that a policy is terminated without an acceptable substitute, and that the acceptability of such a face amount would be a matter that the NRC would determine when approving an initial policy. Such a determination would depend on the circumstances in each case when the policy is issued, including the amount of funding assurance provided by other combination methods (e.g., money remaining in the licensee's decommissioning trusts after payment of premiums).

18. Primary, Not Excess, Insurance

The draft SRP states that the policy should not contain a clause that makes the coverage "excess insurance" over other coverage, because the timeliness of coverage may be impeded by having to resolve which coverage is primary or excess. This guidance is inappropriate and should be deleted. Insurance policies specify whether coverage is primary or excess specifically to eliminate any need to resolve which coverage applies. As long as the primary and excess coverages are clearly delineated, there should be no NRC concern. Further, specifying whether coverage is primary or excess is necessary in order to determine the premiums for the insurance. Thus, these provisions are commercially necessary.

Moreover, there would be no difficulty in determining when NEIL's decontamination liability, decommissioning liability and excess property insurance ("NEIL Property Policy") applies, and when a proposed decommissioning insurance policy applies. The NEIL Property Policy does not provide any coverage for decommissioning unless the permanent cessation of operations is caused by accidental property damage. In the event that the NEIL Property Policy does apply, it pays for the shortfall in the Trust Fund, i.e., the difference between the amount estimated at policy inception to meet the decommissioning costs and the amount in the Trust Fund when the loss is payable. Once the amounts received under the NEIL Property Policy have been exhausted, payments will start under the proposed decommissioning insurance policy, as additional decommissioning expenses are incurred.

16. Authorized Signatures

The draft SRP calls for signatures to be notarized. Notarized signatures are not customary business practice, and this is an unnecessary administrative burden. It should be sufficient that the policy be signed by an officer or senior manager from each company, each with authority to bind their respective company.

18. Policy Must Conform to Applicable State Laws

The draft SRP calls for an opinion letter that states that the policy conforms to applicable state law. Obtaining opinions of counsel is an unnecessary burden, because the state insurance commissioners assure compliance with state laws. Further, the NRC should recognize that many states do not regulate every form of policy issued nor do states regulate all insurers, insurance transactions or nature of risks. While we believe that an opinion letter would be unnecessary given the level of review a utility will provide any purchase of the proposed decommissioning policy, if required, an opinion letter should state that the policy does not violate applicable state law, rather than stating it conforms to such law.

19. State Public Commission Approval or Non-Objection

The draft SRP states that for electric utility licensees with access to non-bypassable charges, the licensee's state public utility commission must have approved the use of the insurance policy or raised no objection. It is unclear why such an approval is necessary. If the insurance, or the insurance coupled with amounts remaining in decommissioning trusts, satisfies NRC's decommissioning funding requirement, there should be no need for any additional assurances from a State PUC. Moreover, in a deregulated state where a non-bypassable charge may exist, State PUCs may no longer have any authority over the utility's decommissioning trust funds, or the methods that the utility uses to satisfy the NRC's requirements. Typically, a non-bypassable charge will exist where a previously regulated utility has transferred its generating capacity into a deregulated Genco, and has been granted a non-bypassable charge as part of that restructuring. In such circumstances, the Genco will be selling its power in the wholesale market, and thus it may no longer be subject to the PUC's jurisdiction. It would therefore be inappropriate for the NRC to require state PUCs to approve the proposed insurance where they have no jurisdiction to do so. The NRC's proposal would also create a potential timing issue. If a State PUC approval were necessary, the PUC might seek some assurance that the insurance is acceptable to the NRC before granting its approval. If the NRC will not provide this assurance until the PUC acts, the regulatory approvals may be stalemated, and the use of the insurance foreclosed. Accordingly, we strongly recommend that the NRC base its approval solely on whether the insurance meets NRC requirements, and leave any other approvals that may be required to other agencies.

21. Proceeds Payable to a Decommissioning Trust

The draft SRP states that the NRC's decommissioning regulations contemplate that decommissioning payments will be made from the trust, and not by the insurer, so the insurer must timely transfer ample funds to the trust, if not all of the funds covered by the policy at once, on a schedule consistent with access to the funds allowed by § 50.82(a)(8). 69 Fed. Reg. at 43,281. As previously discussed in these comments, the draft SRP should recognize the commercial requirements of an insurer. Insurance covers incurred losses covered by the policy, and it is commercially unreasonable to require or expect an insurer to make a lump sum payment before any costs are actually incurred, and without any determination whether they are within the scope of the coverage. Consequently, the draft SRP should allow a normal claims process, where claims are submitted as losses are incurred, promptly assessed, and then paid by the insurer. The draft SRP also states that "actual payment of claims (i.e., cutting and sending checks) may best be

performed through the trust." *Id.* There is no reason why an insurer would not be able to process claims as promptly as a Trustee. Moreover, the payment process could be expedited if the insurer were permitted to pay claims directly to the licensee or vendors. In order to expedite payments, the NRC should allow such direct payment when approved in advance by the Trustee.

22. Role and Rights of the Insurer

The draft SRP states that the insurer must invest all NRC decommissioning funds transferred from prepaid funds or from an external sinking fund, and all earnings thereon, consistent with the prudent investor standard. While this is generally appropriate, the draft SRP should clarify that the standard of care for investments that should apply is *either* the standard imposed by a PUC or State insurance commissioner, or where no such standard applies, the prudent investor standard. This approach, which avoids unnecessary dual regulation of the fund investments, is the model adopted for the investment standard for NDI's held by non-electric utilities pursuant to 10 C.F.R. § 50.75(h)(1)(i)(B).

This Acceptance Criterion also appears to recognize that an insurer can play a legitimate and useful role in claims management during decommissioning. An insurer will likely have experience with the decommissioning of multiple sites that can assist making decommissioning more efficient and cost-effective. Moreover, because the insurer has a strong economic incentive to assure that decommissioning is conducted cost-effectively, the insurer will play a useful role as an additional watch-dog throughout the plant decommissioning. In the end, this will both help assure that decommissioning projects are completed within the policy limits, and that funds in the insurance company are preserved for payment of claims for other facilities.

23. The Standby Trust Must Be Acceptable to the NRC

In the section of the draft SRP indicating that the standby trust must be acceptable to the NRC, the NRC remarks that qualified funds are not likely to be used because of IRS limitations. This statement should be deleted, because it is unnecessary and may be incorrect. Where decommissioning insurance is purchased using qualified funds, the IRS may require that any proceeds from such insurance must be paid back to the qualified trust. NRC should avoid prejudging IRS's treatment of this issue.

From: "Radigan, Kenneth" <Kenneth.Radigan@AIG.com>
To: "NRCREP@nrc.gov" <NRCREP@nrc.gov>
Date: Mon, Aug 9, 2004 5:07 PM
Subject: NUREG-1577, Rev.1

RDB received
8/10/04
1:45 pm

7/19/04

69FR43277

①

Template = ADM-013

E-RIDS = ADM-03
Cell = M.H. DUSNIAS/KUS
(MAD1)

Mail Envelope Properties (4117E761.E13 : 21 : 28179)

Subject: NUREG-1577, Rev.1
Creation Date: Mon, Aug 9, 2004 5:06 PM
From: "Radigan, Kenneth" <Kenneth.Radigan@AIG.com>

Created By: Kenneth.Radigan@AIG.com

Recipients

nrc.gov
twf2_po.TWFN_DO
NRCREP

Post Office
twf2_po.TWFN_DO

Route
nrc.gov

Files	Size	Date & Time
NRC insurance letter 8-09-04.doc		86528
Mime.822	119513	

Options

Expiration Date: None
Priority: Standard
Reply Requested: No
Return Notification: None

Concealed Subject: No
Security: Standard



AIG Environmental
A Division of American International Company

Ken Radigan
175 Water Street, 12th Floor
New York, N.Y. 10038
(212) 458 - 2992
kenneth.radigan@aig.com

August 9, 2004

Chief, Rules and Directives Branch
Mail Stop TG-D59
Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: NUREG-1577, REV.1

Dear Chief:

I would like to make the following comments concerning the draft supplement to the Standard Review Plan which expands NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance".

First, I would like to commend the Nuclear Regulatory Commission for drafting this revision. This revision will enable the licensee to take advantage of insurance industry capacity that is currently available in the market place to underwrite this type of exposure. This revision will help to ensure that sufficient funds will be available to cover the required decommissioning costs of a nuclear power plant. However, there are several aspects of the draft that I feel should be changed which are set forth below. I believe these changes will benefit the licensee and the Nuclear Regulatory Commission.

The first aspect relates to section 13 which requires that the insurance policy which is used to provide decommissioning funding assurance is provided on a primary insurance basis, and not on an excess insurance basis. The pertinent portion of the draft section states that:

"The policy should not contain a clause to the effect that if the licensee has other valid and collectible insurance applicable to decommissioning, then the decommissioning insurance shall be "excess insurance" over such coverage. Because licensee property insurance (e.g., Nuclear Electric Insurance Limited) may cover decommissioning in certain situations, certainty and timeliness of decommissioning coverage may be impeded by having to resolve which insurance is primary or excess."

The licensee is required to purchase property insurance for its nuclear power plant. The property insurance provides insurance for certain costs that may be incurred due to or arising from certain risks pursuant to the terms, conditions and exclusions of such policy. The decommissioning coverage that is contained within the property insurance coverage is very clear as to what decommissioning costs would be paid by the property insurance policy. The financial assurance decommissioning funding insurance policy could also be very clear that it is excess over the decommissioning coverage which may be required under the property policy and it is primary for all other decommissioning costs. It may be much clearer, if the property policy applied, based upon its terms and conditions, that it provides primary coverage to the extent that it provides any coverage and that the financial assurance decommissioning funding policy provides excess insurance to the property policy, to the extent that the property policy applies, and primary coverage to the extent that the property policy does not provide any coverage.

If the primary/excess portion of the regulation remains as stated in the draft and the decommissioning funding policy is forced to be primary to the property insurance policy, it will create a disincentive for new insurance companies to enter this market as such a company would be at a competitive disadvantage against the existing property insurer (e.g., Nuclear Electric Insurance Limited) for the decommissioning funding insurance. The property insurer would already have been paid a premium by the insured to assume the risk of decommissioning costs under certain circumstances as provided by the property insurance. The property insurer would not have a need to charge for this coverage under the decommissioning funding policy because it was already paid to assume this risk under its property policy. However a different insurer who is new to the market that is attempting to underwrite the decommissioning funding insurance would need to charge a premium for all decommissioning costs, even those costs which would otherwise be paid under the property policy, as the decommissioning funding insurance would be "primary" as the draft stands today. The new insurer would not be able to discount the premium for the decommissioning funding policy by the premium which was already paid under the property policy if the decommissioning funding insurance is required to be primary to all other insurance.

In essence this requirement would cause the licensee to pay twice for the same coverage or it would limit the insurers that would be willing to offer this coverage to the existing property insurers, in either event, removing economic incentive and competition. I do not believe that this was the intent of the draft. This problem can be avoided by allowing the decommissioning funding insurance to be excess of the decommissioning costs which are available under the property insurance.

The second section issue that is of concern is the insurance company financial strength requirements contained in Section 4 Issuer Qualifications. (b). This sections states in pertinent part:

"The issuer of the insurance policy has received a financial strength or safety rating of A- or better from A.M. Best, A- or better from Standard & Poor's, A-3 or better from Moody's, A- or better from Fitch, or B- or better from Weiss Rating, as its most recent, Issuer-specific rating."

Realizing the length of time and amount of costs associated with decommissioning a nuclear power plant, it is imperative that the insurer that is providing the decommissioning funding policy have the highest credit rating available in the industry. I believe that the financial standings established in this draft are inadequate when you consider the monetary limits and the length of policy term that is required for the decommissioning funding insurance to fulfill its purpose. It is my opinion that the regulations should require the minimum rating of AA or better.

Additionally, with regard to diversity of risk, I think that the NRC should consider carefully the review of a mutual, captive, or RRG., whether or not such mutual, captive or RRG is insuring one or a number of facilities. The pertinent part of the draft states:

"A mutual, captive, or RRG that can insure more than a single owner's reactors also may be problematic unless the insurer covers a relatively large number of owners and reactors."

The NRC may not be provided with adequate protection if a large number of plants needed to be decommissioned at the same time and a mutual, captive or RRG covers a relatively large number of owners and reactors. A mutual, captive or RRG with a large number of owners and reactors as its sole business could be subject to financial distress if there was some event that would have an impact on the nuclear industry, as there is no diversity in its risk pool to support the downturn for this segment. It is more likely that the NRC would have better protection if the insurer of the decommissioning funding insurance has a diversified portfolio of business.

I have extensive experience in providing funded financial assurance insurance programs for landfill closure and post closure care, oil and gas plug and abandonment, and mine reclamation. All of these programs are designed to provide the required financial assurance that money is available to perform the required cleanup at the end of the operating life of the facility. The financial strength on the insurance provider, the diversity of risk of its business and the spreading of this type of risk among insurance providers should be carefully examined to ensure that the objectives of the financial assurance mechanism is fulfilled.

Thank you for giving me the opportunity to express these comments. Please feel free to call me at (212) 458 2992 if you have any questions.

Ken Radigan
Senior Vice President
AIG Environmental®



Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801

August 13, 2004

Chief, Rules and Directives Branch
Mail Stop TG-D59
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Gentlemen:

**COMMENTS ON DRAFT SUPPLEMENT TO STANDARD REVIEW PLAN
DECOMMISSIONING FUNDING INSURANCE FOR POWER REACTORS (VOLUME
69 FEDERAL REGISTER 43,278, DATED JULY 19, 2004)**

TVA appreciates the opportunity to comment on the draft Supplement to Standard Review Plan (SRP) on Decommissioning Funding Insurance for Power Reactors and the development of this guidance. Insurance is recognized as a proper method of providing decommissioning funding assurance under NRC's regulations. TVA is aware that several companies are developing innovative insurance products to help meet nuclear industry needs while ensuring the certainty of available funds to serve the interests of the public, NRC, and the industry. An appropriate SRP will help prospective insurers understand the full range of NRC's interests in providing this coverage, which will in turn provide additional options for utilities to provide financial assurance for decommissioning. TVA strongly encourages the NRC to recognize new, viable insurance coverage through the issuance of appropriate guidance.

The Nuclear Energy Institute (NEI) has provided detailed comments that were developed in consultation with the sponsors of decommissioning insurance proposals pending before the NRC. NEI's comments address a full range of issues important to developing and implementing a usable decommissioning insurance product in a balanced manner. TVA endorses the comments provided by NEI.

RDB/muree
8/16/04
205 pm (S)

4/19/04
69 FR 43277

(2)

FRIDS = ADM-03

Call = M.A. DUSANISWKSUS (MAD1)

U.S. Nuclear Regulatory Commission
Page 2
August 13, 2004

TVA urges the NRC to recognize the important considerations that will allow insurance to become a more viable, worthwhile decommissioning funding mechanism.

If you have any questions, please contact me at (423) 751-2508.

Sincerely,



Mark Burzynski
Manager
Nuclear Licensing

cc: U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20005-0001



Nuclear Electric Insurance Limited

1201 Market Street
Wilmington, DE 19801
U.S.A.

David B. Ripsom
Senior Vice President
& General Counsel

302 573-2292 Direct
302 888-3000 Tel
302 888-3007 Fax
610 453-8744 Cell
dripsom@nmlneil.com

8/14/04 received

RDB

854 am

DR

7/19/04

64FK 43277

(5)

August 16, 2004

Chief, Rules and Directive Branch
Mail Stop TG-D59
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

**RE: COMMENTS ON DRAFT SUPPLEMENT TO STANDARD REVIEW PLAN
DECOMMISSIONING FUNDING INSURANCE FOR POWER REACTORS
(VOLUME 69 FEDERAL REGISTER 43,278, DATED JULY 19, 2004)**

Dear Sir:

Nuclear Electric Insurance Limited (NEIL) is pleased to respond to the request for comments on the draft Supplemental Review Plan (SRP) on Decommissioning Funding Insurance for Power Reactors. We appreciate this opportunity and support the work of the NRC to prepare the SRP. NEIL currently has on file with the Commission an application for the provision of nuclear decommissioning insurance. In preparing that application we have worked closely with the Nuclear Energy Institute and have also collaborated with it on the submission of comments regarding the SRP. NEI's comments will be forthcoming and we support both those comments and the adoption by the NRC of an SRP. We encourage the NRC in its efforts to develop the procedures necessary for it to approve decommission funding insurance as that is extremely important to the industry and the public interest in decommissioning funding assurance.

If you have any questions, please do not hesitate to contact me.

Sincerely,

David B. Ripsom

Cc: U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20005-0001
Mr. Mark Burzynski, TVA

E-KIDS = ADM-03

Call = M. DUSZYNSKI (MAD1)

template = ADM-013

An Exelon Company
AmerGen Energy Company, LLC
4300 Winfield Road
Warrenville, IL 60555

www.exeloncorp.com

Nuclear
Exelon Generation
4300 Winfield Road
Warrenville, IL 60555

*RDJ, received
8/18/04
8:39 AM*

*7/19/04
69 FR 43277*

(6)

RS-04-122

August 18, 2004

Chief, Rules and Directives Branch
Mail Stop TG-D59
Nuclear Regulatory Commission
Washington DC 20555-0001

Subject: Comments on Draft Supplement to Standard Review Plan
Decommissioning Funding Insurance for Power Reactors
69 Fed. Reg. 43278 (July 19, 2004)

Reference: Letter from R. Myers (Nuclear Energy Institute) to U. S. NRC, "Comments
on Draft Supplement to Standard Review Plan, Decommissioning
Funding Insurance for Power Reactors," dated August 18, 2004

Exelon Generation Company, LLC (EGC) and AmerGen Energy Company, LLC
(AmerGen) have reviewed the subject Federal Register Notice and welcome the
opportunity to comment on this matter. EGC and AmerGen have reviewed the
comments provided by the Nuclear Energy Institute in the referenced letter and endorse
the comments provided in that letter.

If you have any questions regarding this matter, please contact me at (630) 657-2800.

Respectfully,

Kenneth A. Ainger

Kenneth A. Ainger
Manager, Licensing

FRIDS = ADM-03

*Call = M. DUSZNIWSKY
(HFDI)*

Template = ADM-013



PO Box 1551
411 Fayetteville Street Mall
Raleigh NC 27602

*RDB received
8/17/04
2:35 PM*

*7/19/04
69 FR 43277*

(2)

Serial: PE&RAS 04-096
August 17, 2004

Chief, Rules and Directives Branch
Mail Stop TG-D59
Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: Comments on Draft Supplement to "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," NUREG-1577, Rev. 1 (69 FR 43278)

Ladies and Gentlemen:

Progress Energy, Inc. (PGI) supports the development of criteria by which the NRC would evaluate the use of an insurance policy to provide decommissioning funding assurance under 10 CFR 50.75. However, the discussion of Issuer Qualifications in Section II.4 of the draft Supplement to the Standard Review Plan, NUREG-1577, Revision 1, raises two concerns:

- 1) The requirement that the insurer be licensed by the authorities of the State where the relevant nuclear plant is located to transact the business of insurance would seem impractical when extended to cover all states with nuclear power plants.
- 2) The discussion of "captive" or "mutual" insurer could be interpreted to prevent some otherwise qualified large insurers that are organized mutuals from developing a program.

Please contact me at (919) 546-4579 if you have any questions.

Sincerely,

Signature for T. Groblewski

Tony Groblewski
Supervisor - Regulatory Affairs

HAS

E-RFDS=ADM-03

add = M. DUSZYNSKI (MADI)

template=ADM-013

From: <jmatthews@morganlewis.com>
To: <NRCREP@nrc.gov>
Date: Wed, Aug 18, 2004 3:03 PM
Subject: Comments re Draft Supplement to NUREG-1577, Rev.1

RDB received
8/19/04
1240pm. @

Please accept the attached comments, submitted on behalf of NDAC, Inc.

(See attached file: NDAC Letter Joining NEI Comments on Draft SRP Supp
(08-18-2004).pdf)

7/19/04
G9FK 43277
(4)

Regards,

John

John E. Matthews
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: 202.739.5524
Main: 202.739.3000
Fax: 202.739.3001 or
877.432.9652
Cell: 202.255.5110

DISCLAIMER
This e-mail message is intended only for the personal
use of the recipient(s) named above. This message may
be an attorney-client communication and as such privileged
and confidential. If you are not an intended recipient,
you may not review, copy or distribute this message. If
you have received this communication in error, please
notify us immediately by e-mail and delete the original
message.

CC: <cag@nrc.gov>

E-KIDS = ASH-03

Call = M. Dusanivskyj
(MADT)

Template = ASH-013

Mail Envelope Properties (4123A80F.ED4 : 11 : 65236)

Subject: Comments re Draft Supplement to NUREG-1577, Rev.1
Creation Date: Wed, Aug 18, 2004 3:02 PM
From: <jmatthews@morganlewis.com>

Created By: jmatthews@morganlewis.com

Recipients

nrc.gov
twf4_po.TWFN_DO
CAG CC (Carol Gallagher)

nrc.gov
twf2_po.TWFN_DO
NRCREP

Post Office

twf4_po.TWFN_DO
twf2_po.TWFN_DO

Route

nrc.gov
nrc.gov

Files	Size	Date & Time
MESSAGE	824	Wednesday, August 18, 2004 3:02 PM
NDAC Letter Joining NEI Comments on Draft SRP Supp (08-18-2004).pdf	73462	
Mime.822	103002	

Options

Expiration Date: None
Priority: Standard
Reply Requested: No
Return Notification: None

Concealed Subject: No
Security: Standard

Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: 202.739.3000
Fax: 202.739.3001
www.morganlewis.com

Morgan Lewis
COUNSELORS AT LAW

John E. Matthews
202-739-5524
jmatthews@morganlewis.com

August 18, 2004

Chief, Rules and Directives Branch
Mail Stop TG-D59
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Comments on Draft Supplement to Standard Review Plan
Decommissioning Funding Insurance for Power Reactors
69 Fed. Reg. 43,278 (July 19, 2004), NUREG-1577, Rev. 1

Dear Sir:

The following is submitted on behalf of NDAC, Inc. (NDAC). The organizers of NDAC submitted a request for NRC review and approval of a decommissioning liability insurance program by letter dated January 29, 2004. This request was supplemented by letter dated May 7, 1994, which also identified NDAC as the proposed insurance company. NRC accepted this material for review as a topical report by letter dated June 14, 2004.

NDAC supports NRC's effort to develop generic guidance for reviewing decommissioning insurance and urges that NRC adopt appropriate guidance taking into account the need to balance NRC, tax, insurance, state public utility commission, state insurance commissioner and commercial needs. NDAC therefore is encouraged by NRC's first step in publishing the Draft Supplement to the Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance, NUREG-1577, Rev. 1 (Draft SRP Supplement). However, the draft as published presents a number of significant problems, which have been identified in the comments prepared by the Nuclear Energy Institute (NEI) and submitted on behalf of the nuclear industry.

In an effort to facilitate the NRC's review of comments on the Draft SRP Supplement, NDAC coordinated with NEI and others in developing the consolidated comments submitted by NEI.

August 18, 2004
Page 2

NDAC supports those comments and urges that NRC incorporate the changes to the Draft SRP Supplement requested in those comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John E. Matthews", is written over a series of horizontal dotted lines.

John E. Matthews
Counsel for NDAC, Inc.



Jennifer M. Granholm
GOVERNOR

STATE OF MICHIGAN
PUBLIC SERVICE COMMISSION
DEPARTMENT OF LABOR & ECONOMIC GROWTH
DAVID C. HOLLISTER
DIRECTOR

J. Peter Lark
CHAIR

Robert B. Nelson
COMMISSIONER

Laura Chappelle
COMMISSIONER

October 18, 2004

Chief, Rules and Directives Branch
Mail Stop TG-D59
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Comments on NUREG-1577, Rev.1, Draft Supplement to Standard Review
Plan Decommissioning funding Insurance for Power Reactors
69 Fed. Reg. 43.278 (July 19, 2004)

Dear Sir:

The Michigan Public Service Commission (MPSC) appreciates the opportunity to comment on the draft Supplement to Standard Review Plan (SRP)-NUREG 1577, on Decommissioning Funding Insurance for Power Reactors. The use of insurance for decommissioning funding is permitted under NRC's regulations and it has been considered several times over the years, but has not been used in the past because of concerns over the reasonable assurance that decommissioning funds would be available when required. The MPSC is aware of recent development of a new insurance product, which may be of future assistance to the nuclear industry for decommissioning funding requirements.

The MPSC believes that before the NRC takes up its time in providing guidance on the use of insurance mechanisms to fund decommissioning that a decision from the IRS on how the insurance programs will be treated for tax purposes is critical. Without a favorable tax ruling from the IRS the MPSC does not believe that the use of insurance products to fund decommissioning will be beneficial to the utility companies. If a favorable tax ruling is granted by the IRS then the MPSC recommends that the NRC carefully consider the development of proposed insurance mechanisms.

The recent decommissioning funding insurance proposals, which have been submitted by insurers and other parties to the NRC as a potential source of decommissioning funding requirements, demands that the NRC carefully consider the issuance of guidelines for the use of insurance as a mechanism for decommissioning funding of all nuclear plants. However, it appears to the MPSC that the recent interest of insurance products to fund decommissioning is more germane to nuclear plants that are operating in states where deregulation of generation has occurred. States that continue to regulate generation may be best served by the continued

funding in qualified and non-qualified trust funds by customers benefiting from the service provided by the regulated utility owner.

The MPSC will provide comments on two areas of concern presented in the SRP guidance criteria, which correspond to the numbers and headings used in the SRP-NUREG-1577. The MPSC has not evaluated current insurance proposals sufficiently to make an evaluation of such products.

4. Issuer Qualifications

The SRP states that the insurer must be "licensed" by authorities of the State where the relevant nuclear plant is located to transact the business of insurance. The MPSC recommends that it become mandatory that an insurer has its principal place of business in the United States and that it is incorporated in the United States. The MPSC believes that the preferred method is to have each insurer licensed in the State where the nuclear plant is located. The State of Michigan does require an insurer to be licensed in Michigan, before it can provide an insurance product (MCL 500.424). If insurers are not required to be licensed in each State it is most likely that insurers will seek out the most favorable State to be licensed in. Someone has to take responsibility of the licensing for the insurer. If the insurer is required to be licensed in only one State there would have to be some federal statutory exemption that would preempt conflicting State laws in States that do require licensing. The NRC may become the agency that would have to take responsibility that the insurance is offered, issued and delivered properly. The MPSC does not think that it is duplicative regulation to subject each insurer to licensing requirement in the State where the nuclear plant is located. In fact it is prudent that every State jurisdiction would want to license an insurer of a product where adequate protection of public health and safety is involved and the dollars have come from the customers under that States regulatory jurisdiction.

The NRC has requested comments on the proposed guidance with respect to a risk retention group (RRG) or mutual insurer being acceptable. One of the proposed requirements is in regard to the financial ratings of the insurer. Most of us are familiar with the credit ratings of our regulated utilities and the agencies of Standard and Poor's, Moody's and Fitch's that provide such rating. The financial credit ratings, which are provided by these agencies, provide comfort in the financial strength or health of that utility. The licensing of an insurer by each State may address some concerns about the solvency of an insurer, but does not alone demonstrate the financial strength or safety rating. A new decommissioning funding insurer should be required to provide a satisfactory rating by a rating agency before it is allowed to begin offering insurance. No State desires to risk critical decommissioning funds to an insurer that may not be able to meet future obligations. There should be some financial standards established, in addition to just a license requirement.

19. State Public Service Commission Approval or Non-objection

A State Commission approval or non-objection for the use of an insurance policy is appropriate in accordance with current and future nuclear decommissioning funding policy. The State Public Service Commissions should not be shut out of the process, which involves adequate protection of public health and safety under its jurisdiction, an area that states are well positioned to provide. State PUC review of the insurance policy is appropriate for the protection of ratepayers subject to its jurisdiction. In the certification pursuant to Section 33(a) (2) of the Public Utility Holding Company Act of 1935 certification by the State PUC was mandatory to qualify for the exemption. The State PUC has to certify that it had authority and resources to protect utility ratepayers and that it intended to exercise that authority. The MPSC has authority over the decommissioning trusts of the nuclear plants under its jurisdiction since they were started and it intends to maintain that authority for the purpose of issuing a potential new decommissioning product. The State PUC's have a commitment to their utility customers and they should not be foreclosed from a process that would affect them.

In summary, if the IRS provides a favorable tax ruling for the use of insurance policies and the NRC sees merit in allowing an insurance mechanism to be used for the funding of nuclear decommissioning the MPSC urges the NRC to continue allowing each State PUC to make the final decision on whether it will allow its utilities to fund nuclear decommissioning with an insurance policy.

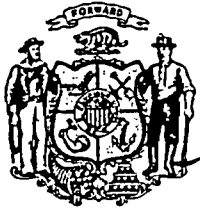
We hope the MPSC comments are timely and thank-you for the opportunity to comment and your consideration.

Sincerely,

J. Peter Lark, Chair

Robert B. Nelson, Commissioner

Laura Chappelle, Commissioner



Public Service Commission of Wisconsin

Burneatta Bridge, Chairperson
Robert M. Garvin, Commissioner
Mark Meyer, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

October 12, 2004

Chief, Rules and Directives Branch
Mail Stop TG-D59
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Comments on NUREG-1577, Rev. 1, Draft Supplement to Standard Review Plan,
Decommissioning Funding Insurance for Power Reactors
69 Fed. Reg. 43,278 (July 19, 2004)

Dear Sir or Madam:

The Public Service Commission of Wisconsin is pleased to respond to your request for comments on the draft Supplement to Standard Review Plan you have prepared, which proposes criteria for evaluating the use of insurance policies to provide decommissioning funding assurance under 10 CFR 50.75.

Under 10 CFR 50.75(a), funding for the decommissioning of electric power reactors is subject to dual regulation by both the federal and state governments. The state of Wisconsin has vigorously exercised this responsibility for over 30 years, regulating decommissioning in order to protect ratepayers since the earliest days of nuclear power in Wisconsin, and well before the federal government asserted its decommissioning authority. Wisconsin has also taken a very conservative approach to decommissioning, to ensure that these costs are fully funded. For example, in 1985 the Public Service Commission (Commission) ordered the owners of Kewaunee Nuclear Power Plant and Point Beach Nuclear Plant to change their accounting methods and use external sinking trusts as their sole means of accruing decommissioning funds. The Commission established both qualified and nonqualified trusts, specifying that no funds could be released from these trusts without its prior approval. Since that date, the Commission has maintained ongoing supervision over the amounts collected from ratepayers and over permissible fund investments.

The current operating license of Kewaunee will expire in 2013, while those of the two units at Point Beach expire in 2010 and 2013. Because of the Commission's active and conservative regulation, funding levels for each of these plants are already sufficient to pay the site-specific costs of full decommissioning to greenfield status.

The Commission is vitally interested in continuing this state regulation of decommissioning funding. Wisconsin needs the ability to decide for itself whether insurance is an acceptable alternative to external sinking funds. The Commission recommends that the NRC do nothing that might compromise the ability of states to protect their citizens from the costs of

decommissioning. It is essential that the Commission retain authority to determine what forms of financial assurance meet Wisconsin's circumstances and will work best for Wisconsin.

The Commission is also concerned that insurance not become a means of diluting the real financial assurance of nuclear plants nationwide. Establishing the financial solvency of private insurers is not one of the NRC's principal areas of strength. These third-party guarantors of financial assurance, which have no direct or indirect recourse to the ratepayers who receive electricity from a plant, may be more likely to fail if the plant's decommissioning costs are unexpectedly high. The bankruptcy of an insurer raises the possibility that taxpayers throughout the country will be tapped to pay unrecovered costs of decommissioning some plant. This would be a liability of taxpayers residing in every state. This could be a particular problem for single-owner insurance pools, because state Insurance Commissioners may view these as a form of self-insurance whose risks fall entirely upon the owner.

To protect the citizens of Wisconsin, insurance should not be allowed for any U.S. plant unless it is as real a form of financial assurance as every other allowable type of decommissioning funding.

Thank you for considering these comments.

Sincerely,

Lynda L. Dorr
Secretary to the Commission

LLD:DAL:JAK:jlt:L:\letter\NRC decommissioning funding assurance.doc

cc: Robert Norcross
David Ludwig